

IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF PENNSYLVANIA

ANTHONY DeFRANCO,)
Plaintiff,) No. CA-04-230-ERIE
) Magistrate Judge Baxter
v.) District Judge Cohill
)
WILLIAM WOLFE, et al.,)
Defendants.)

PLAINTIFF'S REPLY TO DEFENDANTS RESPONSE

AND NOW, comes Plaintiff, pro se, replying to the Defendants Response, dated September 28, 2008:

Plaintiff has filed a motion to amend and supplement this complaint a second time (Doc.#114)---as stated in that motion, this Honorable Court has already granted him permission to file this during the April 21, 2005 preliminary injunction hearing (See, Transcripts) and the Court further wrote the same in its Report and Recommendation (Doc.#85).

Defendants claim that Plaintiffs amended and second amended complaint do not relate to the original; first, Plaintiff requested to amend and supplement the complaint. Second, in regards to adding new defendants in the amended complaint, Plaintiff had already named Defendant Beard in his originally complaint but inadvertently omitted his name on the cover page (See complaint and amended complaint). Moreover, in Plaintiffs amended complaint, he specifically goes back and recounts the incidents that took place then. The Defendants are again misrepresenting the truth; see amended complaint generally (Doc.#63).

It is the Defendants who are manipulating, fabricators, tamper of witness and violator's of constitutional rights. They make a bald assertion that Plaintiff is an abusive, litigious inmate. That is

interesting as this is the first lawsuit he has ever filed. And while he has filed numerous documents, it is partly because he is not well versed in the law, and, many of the documents were filed because the Defendants blatantly violated his constitutional rights by retaliating against him in the form of a transfer; this done by Defendant Barr while he filed a signed affidavit claiming not to have plans to transfer Plaintiff. And it was Defendant Barr and company who effectively tampered with a material witness, i.e. Dr. Lindemuth after this Court granted a T.R.O. So the Defendants ranting and ravings about Plaintiff being litigious is diatribe in light of the foregoing.

The Defendants have violated Plaintiff's rights in the retaliatory transfer, as is plead in the 2nd Amended and supplemental complaint. They further entered into a conspiracy to harm him while at Smithfield. They should not be allowed to escape these acts now by claiming it is "prolonging" the case. Plaintiff would rest on his motion to file the 2nd amended complaint (Doc.#114).

Plaintiff objects to the Defendants wanting the John and Jane Does removed. Discovery has not commenced and until then asks that they remain. Further, as plead in the 2nd amended and supplemental complaint, Defendant Barr did not act alone in having Plaintiff transferred and he needs those names to add as they were involved in the incident.

Plaintiff would point out to this Honorable Court that during the April 21, 2005 Hearing, this Court specifically stated that what had transpired was violative of his 14th Amendment and that once he had exhausted the grievance process he could amend this complaint (See, Transcripts); this Court further admonished Defendant Barr by sending a message via Mr. Skendall telling him that the Court was disappointed

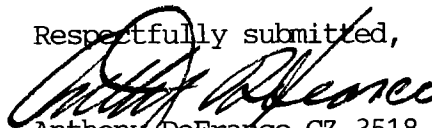
in him for lying and transferring Plaintiff.

While Defendants claim Plaintiff has not exhausted, this simply is not so. Many of the grievances are attached to the complaint. Moreover, this is a question of fact and should not be resolved at this stage. Plaintiff stands on his averments that he has exhausted the grievance process that "has been made available" to him.

WHEREFORE, based upon all of the foregoing, including Plaintiff's motion to file the second amended and supplemental complaint, it is asked that the Court allow it. Further, it is respectfully averred that this Court has already granted Plaintiff permission to amend a second time.

Date: 10/6/05

Respectfully submitted,


Anthony DeFranco CZ-3518
10745 Route 18
Albion, Pa. 16475-0002

CERTIFICATE OF SERVICE

Service was made by US First
Class Mail to the Attorney
General's Office, 564 Forbes Ave.,
Pittsburgh, Pa. 15219, this date.